2012 IL App (1st) 100063-U

No. 1-10-0063

SIXTH DIVISION
March 30, 2012

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 1171
	)	
MICHAEL BLACK,	)	The Honorable
	)	John J. Fleming,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Palmer concurred in the judgment.

O R D E R

¶ 1 *HELD*: Defendant received effective assistance of counsel and understandingly waived his right to a jury trial.

¶ 2 Following a bench trial, defendant, Michael Black, was convicted of attempted murder, armed robbery, and two counts of aggravated discharge of a firearm and sentenced to 22 years' imprisonment. On appeal, defendant contends: (1) his counsel was ineffective for failing to raise an insanity defense; (2) his counsel was ineffective for failing to file a motion to suppress

defendant's incriminating statement; and (3) he did not understandingly waive his right to a jury trial. Based on the following, we affirm.

¶ 3 FACTS

¶ 4 On April 26, 2006, defendant worked at Just Us Lounge located at 7320 S. Halsted in Chicago, Illinois. Delvon Funches, who worked with defendant, testified at trial that he was outside and observed defendant engage in a heated argument with a female. Funches witnessed defendant become angry and kick the female's car as she drove away. According to Funches', he returned to his janitorial work in the basement of the lounge when he heard "three loud sounds." Shortly thereafter, defendant "rushed" through the basement door, which was adjacent to the parking lot, and took the stairs up to the bar area of the lounge. Defendant then returned to the basement and locked the back door with a two-by-four. Defendant, however, unlocked the door and exited toward the parking lot.

¶ 5 Elton Harris testified at trial that he was at 73rd and Halsted at approximately 9:45 p.m. on the night in question purchasing food from a restaurant when he witnessed defendant in a parking lot between the lounge and the restaurant. According to Harris, defendant was acting strange and talking to himself. Defendant approached Harris and asked whether Harris had a family. Harris responded and reentered the restaurant to pick up his take-out food. After exiting the restaurant, Harris noticed a police car in the adjacent parking lot. The police officers had retrieved food from the restaurant as well and drove away from the area. According to Harris, defendant then forced a handgun into the side of Harris' body and demanded his jewelry. Defendant said he needed the items for "his land." Harris gave defendant a watch, a ring, and a

bracelet, as well as his take-out food. Defendant then walked toward the lounge. In route, defendant approached a car and fired his handgun into the air. Upon hearing the gunshot, Harris crouched down to protect himself. Harris waited a short time then ran from the area. As Harris was running, he saw defendant in the fenced in parking lot. Harris then heard two more gunshots.

¶ 6 Officer Keith Sinks testified that he and his partner, Michael Russow, responded to a call indicating that gunshots had been fired near 73rd and Halsted. When they arrived, Officer Sinks noted a man standing in the rear of the Just Us Lounge and pointing in the direction of the lounge. Officers Sinks and Russow approached the rear of the lounge and took the stairs leading up to an apartment where Louise Williams, the owner of the lounge, lived with her family. Williams led the officers through her apartment to the front door and downstairs to the outdoor, front entrance of the lounge. Once outside and while walking toward the lounge door, Officer Sinks passed a window through which he noticed a man. The man took cover upon seeing the officers. Officer Sinks then noticed a black handgun in the window. A gunshot was fired. In response, Officer Sinks turned to run back toward the staircase. As he passed the window, Officer Sinks observed the man inside face him, point his handgun at Officer Sinks, and fire the weapon again. Officer Sinks was shot in the wrist and was hit in the face with debris from the window. Officer Sinks proceeded to run for cover and radioed for back up assistance.

¶ 7 Williams testified that when she led the police officers to the front door of the lounge she saw someone inside the window. According to Williams, she could not identify the individual because she only saw his back. On cross-examination, however, Williams admitted that she

testified before a grand jury the day after the offense and, at that time, she identified the individual inside the window as Funches.

¶ 8 Officer Robert Cummings testified that he and his partner, Officer Derrick Dixon, responded to Officer Sinks' call for assistance. The officers parked their car behind the lounge and, while walking toward the lounge, heard a gunshot and someone yell "I'm going to kill all you motherf****." Officers Cummings and Dixon took cover. Officer Cummings did not see who fired the gunshot.

¶ 9 Funches further testified that defendant returned to the basement of the lounge approximately 15-20 minutes later. Defendant placed a handgun on the pool table and locked the basement door, adding a two-by-four to the door for additional security. Defendant also scattered broken glass in front of the door. Defendant then created a barricade on the stairs leading to the bar area of the lounge by pushing a number of stacked boxes, benches, and chairs onto the stairs and at the entryway. Defendant also placed a silver bracelet and silver ring on the pool table. Funches heard windows being broken upstairs in the lounge. The pair presumed that the police were attempting to enter the lounge. Defendant took a hammer and broke a light bulb that illuminated the basement. Defendant threatened the police not to enter the basement and instructed Funches to do the same, threatening Funches with a hammer. According to Funches, defendant became emotional and pleaded with Funches to stay with him. Funches responded by comforting defendant. Defendant told Funches that he thought they "were going to make the evening news." Funches told defendant that they had to leave the basement. Defendant agreed and "rushed" up the stairs, through the barricade, and outside the front door of the lounge.

Funches followed.

¶ 10 Sergeant Thomas Lamb testified that he was the supervisor of the special weapons and tactics (SWAT) team that responded to the scene. Louise Williams' family was evacuated safely from the building. According to Sergeant Lamb, in the early morning hours of April 27, 2006, two individuals exited the lounge. Funches complied with verbal demands upon his exit. Defendant, on the other hand, yelled "f*** the police. I'll kill you. I have guns and lights also." Sergeant Lamb testified that defendant made several threatening gestures while reaching for a metal object in his waistband. Before officers' responded, the metal object was identified as a flashlight. Defendant was sprayed with pepper spray while struggling to be restrained. He was eventually placed in handcuffs and into a police car.

¶ 11 Officer Sinks further testified that, once back up assistance arrived, he was taken from the scene to receive medical attention. Officer Sinks, however, returned to the lounge and observed defendant as he was placed into a police vehicle. Officer Sinks identified defendant as the shooter at that time.

¶ 12 Detective William Brogan testified that he interviewed defendant at the police station. After waiving his *Miranda* rights, defendant provided a statement. Defendant said that, after arguing with his girlfriend in the parking lot next to the lounge, he returned to work inside the lounge. While inside, defendant noticed police officers outside the front window. According to defendant's statement, he was afraid of the police so he fired a shot at one of the officers and then the "gun went off" when he saw the other officer. Next, defendant ran downstairs and barricaded the back door. Defendant waited for some time, but decided to run out of the lounge in an

attempt to evade the police.

¶ 13 Several forensics witnesses testified, some by way of stipulation, that the scene was processed and a .25 caliber pistol and a .38 caliber revolver along with fired cartridge cases and a hammer were recovered. Gunshot residue testing was performed on Funches and defendant revealing that they were in the presence of a firearm that had been discharged. However, no latent fingerprints suitable for comparison were found on the firearms. The record reveals that DNA was collected from Funches and defendant, as well as from the firearms. Pursuant to the DNA profiles that were generated, neither Funches nor defendant could be excluded as contributors to the DNA on the pistol. Testing from the revolver demonstrated that defendant was a "major contributor" to the DNA found on the trigger, while Funches was excluded as the "minor contributor." In addition, testing on the hammer revealed an exact match with defendant's DNA.

¶ 14 A jury trial commenced; however, prior to its conclusion, on September 11, 2008, defendant was found unfit to stand trial and a mistrial was granted as a result. Defendant had been diagnosed with bipolar disorder in 1996. He was evaluated by Doctor Christofer J. Cooper, a psychologist, and Doctor Nishad Nadkarni, a psychiatrist, before his first trial, on December 4, 2007, and January 10, 2008, respectively, and both doctors opined that defendant was legally sane at the time of the offense. Dr. Nadkarni indicated that defendant suffered from residual symptoms of bipolar disorder, but was fit to stand trial with medication. Dr. Nadkarni stated that "although the defendant was manifesting some manic symptoms of a result of his Bipolar disorder" defendant was not "suffering from mental disease or defect such that would have

substantially impaired his capacity to appreciate the criminality of the alleged act." After the State rested its case-in-chief, defense counsel informed the trial court that he was unsure whether defendant was fit to testify and whether defendant was able to continue trial because he was exhibiting irrational behavior. Dr. Nadkarni again examined defendant and found him unfit to stand trial as a result of a relapse likely caused by defendant's failure to take his medication. Subsequently, defendant was admitted to a mental health center. On December 17, 2008, defendant was evaluated at the mental health center and found fit to stand trial with medication.

¶ 15 On February 19, 2009, a restoration hearing was held during which Dr. Nadkarni testified that defendant again was fit to stand trial with medication. Prior to commencing defendant's second trial, on November 16, 2009, defendant indicated that he wished to pursue a bench trial. The trial court informed defendant, in detail, of the differences between a bench trial and a jury trial. After answering a number of defendant's questions, the trial court admonished defendant that by signing a jury waiver he was waiving his right to a jury trial. Defendant signed the jury waiver form. The case proceeded to a stipulated bench trial in relation to the State's evidence. Defendant did not call any witnesses. During closing argument, defense counsel argued that the State failed to prove beyond a reasonable doubt that defendant committed the crimes. The trial court ultimately found defendant guilty of the attempted murder of Officer Sinks, armed robbery, and two counts of aggravated discharge of a weapon.

¶ 16 Defendant then filed a complaint with the Attorney Registration and Disciplinary Commission (ARDC) claiming that his counsel was ineffective for failing to raise an insanity defense and allowed defendant to waive a jury trial without adequate explanation of his rights.

Before proceeding to posttrial motions, a discussion ensued regarding the ARDC complaint. Defense counsel stated that he had a three-hour conversation with defendant regarding the decision to have a bench or jury trial. Following the discussion, defense counsel was "satisfied that [defendant] wanted a bench trial." In addition, the trial court noted that "defendant was interviewed by numerous psychologists and psychiatrists" and the court itself had a "long dissertation" with defendant regarding the nature of the proceedings. The trial court addressed defendant by stating:

> "I had a long conversation with you and I explained to you that if you wanted a jury, they were in the other building and on their way over. We were all set to do a jury, and I went over and over and over with you what your rights were and explained to you what stipulations were. I went over that very thoroughly with you.
>
> And I know the case was continued from time to time so your counsel could give you copies of the transcripts of the prior trial so that you could read them and be aware of what was going on. ***. The conversations must have lasted at least 10 or 20 minutes as to what would happen if you waived the jury and what the procedures would be, and you seemed – and I explained to you why the jury wasn't here at the time because they would be brought over when the trial began. You seemed to understand at the time. I was convinced at that time you had a clear understanding of your rights and you knowingly waived your right to a jury trial. So I don't think there was any confusion on your behalf at the time.

> And I went [out] of my way I thought to make the record clear you understood what was going on, and I gave you a lot of time to discuss the matter with family members before you decided.
>
> *** As to the issue of whether or not you were misled about a jury trial, I don't think there's any issue. The record is clear that your lawyer was willing to try the jury or bench trial, and it was your decision and your decision alone to waive the jury."

¶ 17 The trial court turned to the motion for a new trial filed by defense counsel, as well as addressing defendant's *pro se* posttrial motion. The court ultimately denied defendant's posttrial motions. Then, after hearing evidence in mitigation and aggravation, the trial court sentenced defendant to 22 years' imprisonment on the attempted murder count and a collective 22-year concurrent prison term on the remaining counts.

¶ 18 DECISION

¶ 19 I. Ineffective Assistance

¶ 20 Defendant first contends his counsel was ineffective for failing to raise an insanity defense. Specifically, defendant argues that defense counsel failed to adequately prepare a defense where there were witnesses available to testify regarding defendant's erratic behavior on the night in question and such lay witness testimony could have supported an insanity defense.

¶ 21 At the outset, we note that defendant properly preserved this issue for our review where he notified the trial court of the ARDC complaint. See *People v. Moore*, 207 Ill. 2d 68, 79, 797 N.E.2d 631 (2003) (finding that, where it is inappropriate for a trial counsel to argue his own

ineffectiveness *vis-a-vis* a posttrial motion, the defendant need only bring an ineffectiveness claim to the trial court's attention.)

¶ 22 To successfully present a claim for ineffective assistance of counsel, the defendant must demonstrate that the counsel's representation fell below an objective standard of reasonableness and that he suffered resulting prejudice such that there is a reasonable probability that, but for the counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). The defendant must overcome the strong presumption that the trial counsel's challenged actions were a matter of sound trial strategy. *Id*. at 689-90. The defendant has the burden to satisfy both prongs of the *Strickland* test; however, where prejudice has not been demonstrated, a court need not determine whether the counsel's performance was deficient. *People v. Harris*, 206 Ill 2d. 293, 303, 794 N.E.2d 181 (2002).

¶ 23 A defendant has the burden to raise the affirmative defense of insanity and to prove by clear and convincing evidence that he is not guilty of the charged offense as a result of that insanity. *People v. Dwight*, 368 Ill. App. 3d 873, 879, 859 N.E.2d 189 (2006). We recognize that insanity may be proven solely by lay testimony, particularly where the lay witnesses observed the defendant shortly before or after the commission of the crime. *Id*. at 880. However, in determining whether a defendant was insane at the time of the offense, it is also relevant to consider the defendant's plan for the crime and methods to prevent detection. *Id*. "A defendant's unusual behavior or bizarre or delusional statements do not compel a finding of insanity, and a defendant may suffer from a mental illness without being legally insane." *Id*.

¶ 24 Defendant contends that counsel should have presented an insanity defense where the testimony of Funches, Elton Harris, and Sergeant Lamb demonstrated that defendant was "crazy and weird" on the night of the offense, and where his medical history, prior hospitalization, and "facts that the defendant had been found insane during the first trial" all supported the defense.

¶ 25 The listed lay witnesses, however, did nothing more than describe unusual, bizarre, and delusional behavior, which is not enough to support an insanity defense. *Id*. Funches testified that defendant was upset after the argument in the parking lot and Funches went into the lounge. Then, after hearing gunshots outside, Funches observed defendant enter the basement, place jewelry onto the pool table, and barricade the doors. In addition, when the police entered the upstairs lounge, he complied with defendant's instruction to shout to the police that they should not enter the basement. Funches testified that, prior to emerging from the basement, defendant became emotional and Funches comforted him. Defendant, however, also told Funches that they were going to "make the evening news." Moreover, Harris testified that he observed defendant talking to himself, ask about Harris' family, demand Harris' jewelry in order to save defendant's "land," and then discharge his handgun into the air while walking away from Harris. Defendant, however, waited until a police vehicle left the area before demanding the jewelry and discharging the handgun. Further, Sergeant Lamb testified that, when defendant emerged from the lounge, he was swinging a flashlight and exclaiming that he had "guns and lights also" and could kill the police. Defendant, however, did not emerge from the basement until some time after the SWAT team arrived, evacuated Williams' apartment above the lounge, and entered the upstairs of the lounge. Accordingly, the witnesses did describe defendant's unusual, bizarre, and delusional

behavior, but their testimony also demonstrated that defendant was aware that he engaged in criminal behavior and was attempting to avoid arrest. Coupled with the expert witness testimony that defendant was sane at the time of the offense, we conclude that there was no reasonable probability that defendant would have been found insane. As a result, defendant has failed to demonstrate he was prejudiced by counsel's failure to raise an insanity defense. See *People v. Adamcyk*, 259 Ill. App. 3d 670, 676-77, 631 N.E.2d 407 (1994) (no prejudice could be demonstrated for the defense counsel's failure to raise an insanity defense where the victim's testimony demonstrated the defendant was aware his actions were criminal and the psychological reports indicated that the defendant was not delusional or unable to control his actions).

¶ 26 Moreover, defendant presented contradictory arguments in his brief regarding counsel's knowledge of defendant's medical history. It, however is clear from the record that counsel and the trial court were aware of defendant's history with bipolar disorder. In addition, contrary to defendant's assertion, he was not found insane during his first trial; rather, two doctors opined that he was sane at the time of the offense and Dr. Nadkarni testified that he was fit to stand trial with medication. When defense counsel noted behavior indicating that defendant was no longer fit to stand trial, a mistrial was granted. A second trial commenced once defendant was found fit to stand trial. At no point was defendant found insane. Further, the hospitalization that defendant referenced occurred after defendant's arrest and there was no evidence presented that it was related to his mental health. In conclusion, defendant has not shown that his counsel's performance "rendered the result of the trial unreliable or the proceeding fundamentally unfair." *People v. Smith*, 195 Ill. 2d 179, 188, 745 N.E.2d 1194 (2000). Defendant, therefore, cannot

demonstrate that he received ineffective assistance of counsel for failing to raise an insanity defense.

¶ 27 Defendant next contends his counsel was ineffective for failing to file a motion to suppress defendant's police statement on the basis that defendant was not sane at the time he gave the statement.

¶ 28 The *Strickland* standard, as set out above, applies equally to this contention. In order to establish the prejudice prong on a claim for failing to file a motion to suppress, a defendant must demonstrate that the motion would have been granted and the outcome of trial would have been different if the evidence had been suppressed. *People v. Bew*, 228 Ill. 2d 122, 128-29, 886 N.E.2d 1002 (2008). "[D]efense counsel is not required to present losing motions in order to provide effective assistance." *People v. Houseworth*, 388 Ill. App. 3d 37, 54-55, 903 N.E.2d 1 (2008). Whether a statement is voluntary, and therefore admissible, depends on whether the statement was made freely, voluntarily, and without compulsion or inducement of any sort and whether the defendant's will was overcome at the time the statement was made. *People v. Richardson*, 234 Ill. 2d 233, 253, 917 N.E.2d 501 (2009). A defendant's ability to make knowledgeable and independent decisions must be considered. *People v. Racanelli*, 132 Ill. App. 3d 124, 132, 476 N.E.2d 1179 (1985).

¶ 29 There is no question that defendant suffered from bipolar disorder. However, Dr. Cooper and Dr. Nadkarni evaluated defendant and concluded that defendant was sane at the time of the offense. Moreover, Detective Brogan testified that defendant waived his *Miranda* rights and provided a consistent account of what happened at and near the lounge. The mere fact that

defendant had a history of bipolar disorder does not demonstrate that he was insane at the time of his statement, especially in light of the evidence to the contrary. Further, defendant again points to his subsequent hospitalization to show that he was insane when he provided his statement. We, again, note that there is no evidence in the record to substantiate defendant's insinuation that he was hospitalized for mental health issues. In fact, the record shows that defense counsel, in closing argument, stated that defendant was taken to the hospital to "take care of his eyes and other bad feelings from having been pepper sprayed" after emerging from the lounge. We, therefore, conclude that, even if defense counsel had filed a motion to suppress defendant's statement, the motion would not have been successful. Consequently, defendant cannot maintain his ineffective assistance claim.

¶ 30 II. Jury Waiver

¶ 31 Defendant contends he did not understandingly waive his right to a jury trial. The State responds that defendant failed to preserve his contention for appellate review. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988) (in order to preserve an issue for appellate review, a defendant must object at trial and include the alleged error in a posttrial motion). Defendant correctly responds that, despite waiver, we may review the alleged error under the doctrine of plain error. See *People v. Bracey*, 213 Ill. 2d 265, 270, 821 N.E.2d 253 (2004) ("[w]hether a defendant's fundamental right to a jury trial has been violated is a matter that may be considered under the plain error rule"). Defendant contends that he never orally waived his right to a jury trial and there is no indication in the record that defendant knowingly and intelligently waived his right by signing the jury waiver form.

¶ 32 In *People v. Bannister*, 232 Ill. 2d 52, 902 N.E.2d 571 (2008), the supreme court succinctly provided the relevant law:

> "[S]ection 103-6 of the Code of Criminal Procedure of 1963 provides: 'Every person accused of an offense shall have the right to a trial by jury unless *** understandingly waived by defendant in open court.' 725 ILCS 5/103-6 (West 2006). To the same end, our decisions have imposed on a trial court the duty of ensuring that a defendant waives the right to a jury trial expressly and understandingly. [Citation.] However, a trial court need not give any specific admonition or advice for a defendant to make an effective jury waiver. [Citations.] The determination of whether a jury waiver is valid cannot rest on any precise formula, but rather depends on the facts and circumstances of each particular case. [Citation.] The statutory requirement of a written jury waiver (725 ILCS 5/115-1 (West 2006)) does not define or give substance to the constitutional right to choose whether to have a jury trial. Rather, a written jury waiver merely memorializes the defendant's decision, allowing a court to review the record to ascertain whether a defendant's jury waiver was made understandingly. [Citation.]." *Bannister*, 232 Ill. 2d at 66.

¶ 33 The record reveals that prior to the start of the scheduled jury trial, defense counsel informed the trial court that defendant "may be indicating bench." We quote extensively from the record to demonstrate exactly what ensued:

"MR. WEISBERG (defense counsel): Judge, he wants your Honor – which, of course, your Honor will do anyway. He wants you to explain exactly what he is giving up. He is concerned that some of the higher charges like attempted murder is on this – the charged for portion. I told him it doesn't matter what's written up there. He is waiving his right to the jury trial and your Honor is hearing the case. But he wants your Honor to explain to him what he is giving up, which I know you would do anyway.

THE COURT: All right. See, here's the thing, Michael, what you are charged with are the lists of charges. So on all of the charges you can have any kind of trial you want. You can have a judge trial, where I hear it, or you can have a jury trial. A jury would be a group of people – it is usually 12. They are picked like we did last time, and they sit and they would hear the evidence and they would make the decision.

When you give up a jury trial, what your lawyer is talking about waiving or you give up, then you have a judge trial. Then I will decide the same thing that the jury would. It is not like you are giving up part of – the charges are any different. The charges are all the same no matter whether it is a bench trial or a judge trial. Then it is just whether – who makes the decision, whether I make the decision or they make the decision.

Yes?

DEFENDANT: Can I say something, please?

THE COURT: Sure.

DEFENDANT: If I was – if I choose a jury trial, how many people would actually for real on the jury?

THE COURT: Okay. When you do a jury trial, by statute, it is 12 unless – there is a rule – unless your lawyer and I decide there is less. Normally it is 12. There is only one case in Illinois where it has been any less.

Okay. So 12 people are picked. Usually what we will do is pick like two extra people who sit there during the trial. They are called alternates. In case one of the first 12 gets sick or something, then they will take their place. When they make the decision, then 12 – the first 12 picked are the ones who would have to get together to make the decision.

DEFENDANT: So you are saying there would be actually two persons over there as to 12?

THE COURT: There will be 14 people total sitting over there. Twelve are the original jurors. Two are called alternate jurors. They are like standbys. So if one of the original gets sick, gets in a car accident and couldn't come to court, the other – one of the other two takes their place. They are just standbys.

But when it comes time to vote, to make a decision, only 12 people would make that decision.

DEFENDANT: Can I ask you something?

THE COURT: Sure.

DEFENDANT: You are a lawful judge, sir?

THE COURT: I am.

DEFENDANT: With all bearance [*sic*] to the truth?

THE COURT: That's what I took an oath to do.

DEFENDANT: What exactly am I signing away too?

THE COURT: All that says if you sign that is that you don't want a jury. You want me to hear the case. That's all. That's the only thing you give up when you sign that. Instead of having the 12 people decide, I decide. That's all."

¶ 34 After inquiring about the differences between attempted murder and aggravated battery, as well as asking whether the second trial was a continuation of the first trial or a new trial and receiving the appropriate explanations, the discussion return to defendant's jury waiver.

"DEFENDANT: So you are saying – what type of trial am I actually signing my – signing off of?

THE COURT: It is your choice if you want to have a jury trial or a bench trial. If you sign that paper, you are saying you are going to have a bench trial and I will hear it. That's all.

DEFENDANT: Just you by yourself?

THE COURT: Right, I would make the decisions.

MR. WEISBERG: Judge, he is asking for another three minutes."

The record indicates a brief recess occurred.

> "THE COURT: All right. Mr. Black, I saw you sign the paper, so you are saying you want a bench trial and that's fine. That's your right. So we will make it part of the record. I have had a full discussion with you, so has your lawyer, and that's your decision to waive your right to a jury trial at this time."

¶ 35 Based on the record, we conclude that defendant understandingly waived his right to a jury in open court. The trial court repeatedly described the difference between a jury and bench trial and the result of signing a jury waiver form. Contrary to defendant's argument, there is no requirement that a defendant explicitly provide an oral jury waiver. See *People v. Bowman*, 227 Ill. App. 3d 607, 612, 592 N.E.2d 240 (1992); *People v. Eyen*, 291 Ill. App. 3d 38, 43, 683 N.E.2d 193 (1997) (jury waiver was not valid where "the record shows that defendant *neither* executed a written jury waiver nor made a knowing and understanding oral waiver of his right to a jury trial" (emphasis added)). Defendant signed the written jury waiver in open court after the extensive discussion with the court and a requested recess. Moreover, after the close of evidence and when the trial court was aware of defendant's ARDC complaint against defense counsel, defense counsel stated on the record that he had a three-hour discussion with defendant regarding whether to select a jury or bench trial.

¶ 36 The case relied upon by defendant, *People v. Lach*, 302 Ill. App. 3d 587, 707 N.E.2d 144 (1998), is distinguishable. In *Lach*, the defendant did not speak English and the record demonstrated that the defendant was never apprised, by his counsel or the court, of his rights to a jury trial. *Id.* at 592. This court, therefore, concluded that the defendant did not knowingly and understandingly execute the jury waiver. *Id.*

¶ 37 We, therefore, conclude that there was no plain error where defendant understandingly waived his rights to a jury trial.

¶ 38 CONCLUSION

¶ 39 We conclude that defendant received effective assistance of counsel and understandingly waived his rights to a jury trial. We, therefore, affirm the judgment of the trial court.

¶ 40 Affirmed.